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January 5, 2006

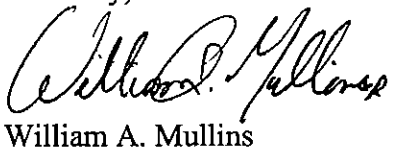
BY ELECTRONIC FILING
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 34795
Roquette America, Inc. - Petition for Exemption from 49 U.S.C. §10901 to Construct a New Line of Rail in Keokuk, IA

Dear Secretary Williams:

I am enclosing herewith Keokuk Junction Railway Co.'s reply to the petitioners' January 4 Motion For Procedural Clarification. Please acknowledge receipt and filing of the accompanying reply by return receipt. If there are any questions concerning this filing, please contact me by phone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

cc: Daniel A. LaKemper
All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

STB FINANCE DOCKET NO. 34795

ROQUETTE AMERICA, INC. - PETITION FOR EXEMPTION FROM 49 U.S.C. §10901 TO CONSTRUCT A NEW LINE OF RAIL IN KEOKUK, IA

REPLY TO MOTION FOR PROCEDURAL CLARIFICATION

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January 5, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

STB FINANCE DOCKET NO. 34795

ROQUETTE AMERICA, INC. - PETITION FOR EXEMPTION FROM 49 U.S.C. §10901 TO CONSTRUCT A NEW LINE OF RAIL IN KEOKUK, IA

REPLY TO MOTION FOR PROCEDURAL CLARIFICATION

Keokuk Junction Railway Co. ("KJRY") hereby replies to the Motion For Procedural Clarification ("Motion") filed yesterday by Roquette America, Inc. ("RAI") and Roquette America Railway, Inc. ("RARI") (collectively, "Roquette") in this proceeding. The Motion effectively asks the Board to ignore the substance of KJRY's December 19 reply to Roquette's petition for exemption ("KJRY's Reply") or to permit Roquette to reply to KJRY's Reply. Neither relief should be granted.

Procedural Background

On November 29, Roquette filed a petition seeking an exemption from 49 U.S.C. §10901 to construct a few hundred feet of track at RAI's Keokuk, IA plant. KJRY replied to Roquette's petition 20 days later on December 19, pursuant to 49 CFR §1104.13(a). KJRY's Reply advocated that Roquette's petition was insufficient to justify initiation of a proceeding or grant of an exemption because, among other things, it failed to establish that Roquette's proposal fell within 49 U.S.C. §10901 as required in order to be exempted from that section. Alternatively, KJRY argued that if the Board chose not to terminate the proceeding at this time, it should set a procedural schedule allowing at least 60 days for discovery, followed by successive 30-day periods for Roquette to complete the filing of its case-in-chief and for KJRY to reply thereto.

On December 22, RARI filed a motion to set a procedural schedule. In that motion, RARI stated that it would treat KJRY's Reply as a reply and would not respond thereto. Roquette asked for an expedited procedural schedule to be set, for limiting KJRY to only its pending discovery requests, and for requiring KJRY to respond completely and finally to Roquette's petition before Roquette made any clarification of the petition. On December 29, KJRY opposed that motion, reiterating its position that the petition was insufficient and that the Board should choose not to move forward with it. In reaction to KJRY's filings of December 19 and 29, Roquette filed its current Motion.

Discussion

While Roquette accuses KJRY of trying to delay this proceeding and/or of procedural maneuvering, in reality it is Roquette that is playing the procedural games. As detailed in the KJRY December 29th filing, it is Roquette who wants to limit the public's ability to conduct full discovery and prohibit full implementation of the Board's discovery rules. It is Roquette that is trying to force KJRY to present its evidence, argument, and a case-in-chief before Roquette has to, even though it is Roquette that has the burden of proof in this proceeding. The latest filing is simply another effort by Roquette to prohibit a full examination of the facts underlying its Petition for Exemption. The Board should not be misdirected by Roquette's efforts.

Effectively, the most recent Motion requests that the Board either agree to ignore the substance of KJRY's Reply or, contrary to 49 CFR §1104.13(c), authorize Roquette to reply to a reply, as well as providing Roquette several weeks' additional time to do so. To justify its extraordinary request, Roquette crafts an argument that the Board cannot act on the arguments in KJRY's Reply unless the Board treats that reply as a motion. The fact that KJRY's Reply points out the deficiencies of Roquette's petition and suggests that Roquette has given the Board insufficient grounds to move forward does not change the reply into a motion to which Roquette

is entitled to respond. Quite simply, what other purpose can a reply have than to state that the pleading replied to is right or wrong and that the action that the pleading requests should or should not be taken? That is what KJRY's Reply does.[1] Whether the term dismiss, deny, reject, or any other term were used, the intent of KJRY's Reply would be the same - i.e., that Roquette's petition makes an insufficient showing to justify going forward.

Indeed, Roquette cites no precedent for its request that the Board automatically convert KJRY's Reply into a motion to dismiss so as to entitle Roquette to reply to KJRY's arguments and comments, nor would such precedent make sense. Were the Board to adopt Roquette's argument, the Board's rules against replying to a reply and requiring that a petition for exemption contain a case-in-chief would effectively become worthless. It would also make a quagmire of Board proceedings. Granting the Motion would effectively extinguish 49 CFR §1104.13(c), opening the floodgates for replies to replies. It also would encourage parties to file petitions for exemption without putting forward a complete justification, absent being challenged.[2] Thus, 49 CFR §1121.3(a), which requires a party seeking an exemption to present its case-in-chief when it files its petition, would likewise be effectively written out of the Board's rules by granting Roquette's present Motion. The Board should reject such a notion by denying Roquette's Motion.

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[1] Indeed, does the fact that this reply suggests denial of the Motion convert this reply into a motion to dismiss, deny or reject the Motion?

[2] Were Roquette's December 22 motion for procedural schedule to be granted as well, exemption petitioners not only would have precedent for believing that they did not need to present their cases-in-chief in their petitions, they also would have precedent for believing that they needed to present their cases-in-chief only after all opposition filings had been concluded. This would certainly lead the Board to less well-informed decisions by authorizing proponents of relief before the agency to withhold principal parts of their case from scrutiny and testing.

Roquette also should not be heard to complain that KJRY is seeking to delay this proceeding when Roquette itself is seeking (i) a special ruling on whether it can reply to a reply, then (ii) a fresh 20 days to prepare such a reply, and then adoption of its procedural schedule. Quite simply, if Roquette would stop making motions and asking for additional time, KJRY, the Board, and the public could start the process called for in the Board's discovery and procedural rules and move on with the proceeding. Accusations that KJRY seeks undue delay become utterly hollow when Roquette itself is seeking to file unscheduled motions and requesting the Board to take extraordinary action by converting replies into motions.[3]

KJRY's Reply was simple. It (a) attacked whether Roquette had made a prima facie case for going forward with a proceeding, and (b) suggested a procedural schedule in the event the Board believes that it presently lacks the necessary information to reach a final determination on Roquette's petition. Such a filing is nothing other than a reply. If Roquette believed that KJRY's Reply was truly a motion to dismiss, then Roquette would have filed a reply, and KJRY would have been free to move to strike that reply as an unlawful reply to KJRY's reply. Instead of following this very standard practice in the industry, Roquette has chosen to complicate matters, file unscheduled motions, and request extraordinary relief. Roquette should not be heard to claim a need for extraordinary relief with respect to such a reply while simultaneously accusing KJRY of delay.

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[3] KJRY also rejects Roquette's assertions that KJRY seeks to delay Roquette's "attempt[] to obtain competitive rail service." KJRY is seeking orderly procedures and information from which the Board can make an informed decision. The relief sought in the Motion and Roquette's multitudinous discovery objections is the principal cause of delay in this proceeding at this time.

Moreover, KJRY already switches over 90% of Roquette's outbound traffic to BNSF at a rate effectively the same as the switch rate that the Board found in UP/SP would insure "meaningful access" for shippers. See KJRY's Reply at 15. In other words, Roquette already has competitive rail service.

Should the Board choose to go forward with this proceeding, KJRY may later file an actual motion to dismiss following conclusion of discovery. However, it would be premature at this time to file such a motion since Roquette is presently asserting that basic facts, such as whether it even owns the tracks that it proposes to rip out, extend or operate over, are irrelevant to the Board's consideration in this proceeding. (See, e.g., Exhibit 1 hereto, page 7 of Roquette's objections and partial responses to KJRY's discovery.) For the time being, however, KJRY's attack on Roquette's prima facie case seems to be sufficiently worrisome to Roquette to merit the Board's serious consideration.

Conclusion

KJRY's Reply is properly characterized as just that - a reply. Merely because KJRY's Reply suggests that the Board should terminate this proceeding now due to Roquette's failure to show that its proposal was subject to the Board's authority under Section 10901 does not justify the extraordinary requests in Roquette's most recent Motion. The Board has every right to reject a petition that fails to meet the statutory and regulatory requirements, without a motion to dismiss. Indeed, it has a duty to do so. Were the Board to grant Roquette's requests, it would set a precedent undermining the requirement that an exemption petitioner present its case-in-chief when it files its petition. Every inadequate petitioner would have the ability, not just to reply to the reply, but also to augment its case-in-chief after a reply has been filed. Such a precedent would make a quagmire of Board proceedings, would lead to less well-informed

decisionmaking by the Board, and would be fundamentally unfair. The Board should refuse to set such precedent by denying the Motion.

Respectfully submitted,

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Attorneys for Keokuk Junction Railway Co.

Request No. 8. Produce all documents upon which You base any claim that Roquette or RARI own the track identified in the Petition as the "Plant Lead."

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The Board has no jurisdiction to determine the ownership of any property that is the subject of this proceeding.

Request No. 9. Produce all documents upon which You base any claim that Roquette or RARI own the track identified in the Petition as the "Downriver Lead."

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The Board has no jurisdiction to determine the ownership of any property that is the subject of this proceeding.

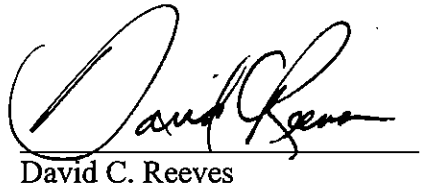
Request No. 10. Admit or deny the following: In the period since January 1, 1981, Roquette paid KJRY for leasing the Hub Track to Roquette.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, based upon information available to it, Roquette denies this request.

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 5th day of January, 2006, copies of the foregoing reply have been served by first class mail, postage prepaid, or by more expeditious service, upon all parties of record listed on the Board's website.



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Attorney for Keokuk Junction Railway Co.